

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:08CR3001
)	
Plaintiff,)	
vs.)	MEMORANDUM
)	AND ORDER
SANTIAGO LOPEZ-MENDOZA,)	
)	
Defendant.)	

This matter is before the court on the defendant's application for a certificate of appealability, motion for leave to appeal in forma pauperis, and what the court will construe as a notice of appeal (filings [177](#), [178](#), [179](#)) with regard to the court's memorandum and order and judgment of November 3, 2010, (filings [175](#) & [176](#)) which denied the defendant's motion to vacate, set aside, or correct his sentence pursuant to [28 U.S.C. § 2255](#).

Before the defendant's appeal can proceed, a certificate of appealability must issue. See [Fed. R. App. P. 22\(b\)](#). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." [28 U.S.C. § 2253\(c\)\(2\)](#). When a district court has rejected a constitutional claim on the merits in the course of denying a § 2255 motion, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" in order to meet the standard contained in § 2253(c). [Slack v. McDaniel, 529 U.S. 473, 484 \(2000\)](#). In contrast, when a district court denies a § 2255 motion on procedural grounds without reaching the applicant's underlying constitutional claims on the merits, a certificate of appealability should issue under § 2253(c) when "the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." [Id.](#)

For the reasons set forth in the court's previous memorandum and order (filing [175](#)), the court concludes that the defendant has not made a substantial showing of the denial of a constitutional right as required by [28 U.S.C. § 2253\(c\)](#).

The defendant was determined to be financially unable to obtain an adequate defense in his criminal case, and an attorney was appointed to represent him. Because this appeal appears to be taken in good faith, even though a certificate of appealability will not be issued, the defendant may proceed in forma pauperis on appeal pursuant to [Fed. R. App. P. 24\(a\)\(3\)](#).

IT IS ORDERED that:

1. The defendant's motion for certificate of appealability (filing [178](#)) is denied, and a certificate of appealability will *not* issue in this case;
2. The defendant's motion to proceed in forma pauperis on appeal (filing [179](#)) is granted; and
3. The Clerk of the United States District Court for the District of Nebraska shall transmit a copy of this memorandum and order to the United States Court of Appeals for the Eighth Circuit.

DATED this 8th day of December, 2010.

BY THE COURT:

s/ Richard G. Kopf

United States District Judge

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